Supreme Court, U.S.
FILED

No. 10-863

JAN 3 2011
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In The
# Supreme Court of the United States

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## YASSIN A. KADI,

*Petitioner,*

v.

## UNITED STATES OF AMERICA,

*Respondent.*

---

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

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# PETITION FOR WRIT OF CERTIORARI

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*Dated: January 3, 2011*

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## QUESTIONS PRESENTED

1. May a district court authorize a dismissal by the Government of its civil forfeiture action, when that dismissal is conditioned upon an agreement between the Government and one of the claimants requiring the transfer of the defendant assets to some third party, where those assets were never forfeited and remain neither the property of the Government nor the property of that claimant, and where authorizing the agreed dismissal permanently deprives the rightful and innocent owner of those assets?

2. Where the Government seeks but does not obtain civil forfeiture, either due to its voluntary dismissal of such an action or as the result of an unsuccessful forfeiture proceeding, is an innocent owner who has failed to comply with the technical requirements of filing a civil forfeiture claim during the pendency of the terminated forfeiture proceeding permanently barred from asserting any interest in his or her assets which have never been forfeited? Conversely, can the Government use the mere filing and subsequent dismissal of a forfeiture action as the basis to seize and then permanently deprive an innocent owner of its property?

## PARTIES TO THE PROCEEDING

The parties to this proceeding are Petitioner Yassin A. Kadi and Respondent the United States of America. This proceeding also concerns the interests of the Quranic Literacy Institute, which filed a claim in the civil forfeiture action and was a party to the Government's agreed motion to dismiss, but which was not a party to the appeal in the Seventh Circuit. It also bears upon the interests of Joyce and Stanley Boim, who are the putative transferees of the defendant assets and who have sought to intervene in this action, both in the District Court (where their motion to intervene was denied) and in the Seventh Circuit (where the court held that it was unnecessary to rule upon their motion to intervene).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Yassin A. Kadi ("Petitioner") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit (the "Seventh Circuit").

## OPINIONS BELOW

The order of the Seventh Circuit denying the petition for rehearing and rehearing *en banc* is unreported. (App. 31a). The opinion of the Seventh Circuit summarily affirming the order of the United States District Court for the Northern District of Illinois (the "District Court") is also unreported. (App. 1a). The opinion of the District Court granting the motion to dismiss is unpublished but has been reported electronically at 2010 WL 1172481 and 2010 U.S. Dist. LEXIS 26909. (App. 9a).

## JURISDICTION

The judgment of the Seventh Circuit summarily affirming the District Court was entered on May 21, 2010. The order of the Seventh Circuit denying the petition for panel rehearing and rehearing *en banc* was entered on October 6, 2010. This Court has jurisdiction to review the Seventh Circuit's decision by writ of certiorari pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the Fifth Amendment to the Constitution of the United States which provides:

> No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This case also involves the Federal civil forfeiture statute, 18 U.S.C. § 981, which provides in Section 981(a)(1)(A) that the categories of "property [] subject to forfeiture to the United States" includes the following:

> Any property, real or personal, involved in a transaction or attempted transaction in violation of section 1956, 1957 or 1960 of this title, or any property traceable to such property.

## STATEMENT

This case involves two questions of exceptional importance regarding the traditionally-disfavored remedy of civil forfeiture. The first question presented is whether a district court can disregard the known ownership interests in defendant property of an innocent owner when, as a condition of the Government's requested dismissal of a forfeiture action, the district court redistributes the innocent owner's assets to a third party. This first question reflects a split between the Seventh Circuit and several of its sister circuits, as well as a divergence of the Seventh Circuit from its own prior precedent. The second question is whether or not the purported failure to comply with civil forfeiture claim procedures permanently bars a party from asserting its right to its property for all purposes,

even when the Government has failed to obtain forfeiture, or has dismissed its forfeiture action. In effect, the issue is whether the Government can use the mere filing of a forfeiture action to seize and redistribute property of innocent owners to third parties where forfeiture has not occurred and the Government dismisses the action. This second question is of critical importance to guide putative claimants in future civil forfeiture actions.

## A. Factual Background

### 1. Petitioner's Assets

On July 19, 1991, Petitioner loaned $820,000 to the Quranic Literacy Institute ("QLI"), a claimant in the forfeiture action and a party to the motion to dismiss, but a non-party to the subsequent appeal. The purpose of the loan was to enable QLI to purchase land in Woodridge, Illinois, which QLI ultimately did purchase. In support of his claim filed with the District Court, Petitioner produced an uncontroverted affidavit of Dr. Ahmad Zaki Hammad, a principal of QLI and its former president, reflecting this. (App. 33a).

The affidavit further establishes that, subsequent to QLI's purchase of the Woodbridge property, QLI eventually sold the property. After that sale, Petitioner and QLI agreed that QLI would hold $820,000 from the proceeds of the sale on behalf of Petitioner while QLI sought to identify new property to purchase. Upon QLI's identification and purchase of such property, the assets being held on Petitioner's behalf would convert to a charitable trust for the benefit of QLI. QLI's holding of

Petitioner's assets during this period satisfied Illinois state law for the creation of a bailment, with Petitioner as bailor, and QLI as bailee, thereby maintaining for Petitioner a cognizable ownership interest in the assets. Before the purpose of the bailment could be fulfilled – by QLI's identification and purchase of new property – the Government seized, *inter alia*, those assets being held by QLI on behalf of Petitioner.

### 2. The Boims' Judgment Against QLI

While the present forfeiture action was ongoing, Joyce and Stanley Boim (the "Boims") filed a separate lawsuit in the United States District Court for the Northern District of Illinois against QLI and other defendants for claims not relevant to the present action. The Boims obtained a jury verdict against QLI and certain co-defendants in the amount of $52,000,000, which was subsequently trebled by the District Court to $156,000,000. (App. 24a). Petitioner was not a party to that action and has no liability for that judgment.

As part of their efforts to enforce this judgment, on April 24, 2006, the Boims obtained an order from a magistrate judge directing QLI to turn over to the Boims "the assets of the Quranic Literacy Institute" which were the subject of the present forfeiture action "in the event of the entry of any order by the United States District Court for the Northern District of Illinois dismissing the Forfeiture Action or otherwise finding against the government's right of forfeiture." (App. 27a-28a).

On January 30, 2009, the magistrate judge supplemented his order, specifically directing "[t]he United States Department of Justice and the United States Marshal Service," instead of QLI, to turn over to the Boims "the assets of the Quranic Literacy Institute" which were the subject of the present forfeiture action "in the event of the entry of any order by the United States District Court for the Northern District of Illinois dismissing the Forfeiture Action or otherwise finding against the government's right of forfeiture." (App. 29a-30a).

## B. Proceedings Below

### 1. The District Court

On June 9, 1998, the Government filed its forfeiture action in the District Court. On May 12, 1999, the District Court denied motions to dismiss filed by QLI and certain other claimants (who are not relevant to the present dispute) which had been opposed by the Government. Following the denial of the motions to dismiss, the case was, in effect, stayed for over a decade in order to allow allegedly related civil and criminal cases to be resolved. At various times during this period, Petitioner, who was not a party to any of the allegedly related proceedings, received repeated assurances from the Government that his interests in the defendant assets would be protected, and that it would be unnecessary and unhelpful to the Government in pursuing its allegedly related actions for him to file a claim in the forfeiture action. Copies of uncontroverted affidavits filed in the District Court from Petitioner's current United Kingdom-based counsel and Petitioner's

former United States counsel reflecting those assurances are in the Appendix. (App. 36a and 42a).

Over a decade after the District Court had denied the previous motions to dismiss, on December 1, 2009, the Government and QLI filed an agreed motion to dismiss without advising Petitioner of that filing. The essential condition of the agreed motion was that all assets seized from QLI, including those assets which were being held by QLI on behalf of Petitioner, were to be turned over to the Boims – albeit without Petitioner's knowledge or consent. Upon learning of the agreed motion to dismiss, which would result in the redistribution of his assets to the Boims, Petitioner filed his claim and his opposition to the motion to dismiss in the District Court. Specifically, Petitioner objected to the Motion to Dismiss, *inter alia*, on the basis that, even if the motion was technically satisfactory under Rule 41(a)(1) of the Federal Rules of Civil Procedure (which Petitioner disputes), the Government could not use the motion to dismiss in order to convert the mere filing of its forfeiture action without ever having obtained a judgment of forfeiture as a means to take possession and control of Petitioner's assets – much less to redistribute Petitioner's assets to the Boims.

On March 22, 2010, over Petitioner's objections, the District Court entered an order granting the agreed motion to dismiss. As proposed in the motion, the District Court directed all assets seized from QLI, regardless of their ownership, to be turned over to the Boims. (App. 19a). The order expressly relied upon the magistrate judge's orders requiring "the assets of the Quranic Literacy

Institute" to be turned over to the Boims as the basis for directing those assets to the Boims. (App. 20a). On March 29, 2010, Petitioner noticed his appeal of the order to the Seventh Circuit.

### 2. The Seventh Circuit

On April 22, 2010, Petitioner filed a motion to stay, requesting that the Seventh Circuit prevent the Government from turning over any disputed assets to the Boims until the appeal could be resolved. The timing of Petitioner's claim during the pendency of the forfeiture proceeding had not been relevant to his opposition to the motion to dismiss nor had it been the subject of any finding or conclusion by the District Court, and therefore also was not raised in Petitioner's motion to stay as it had no bearing on the appeal. On May 21, 2010, a panel of the Seventh Circuit issued an order both denying the motion to stay and summarily affirming the District Court, without the benefit of briefing or oral argument. In addition to agreeing with the District Court's dismissal of the forfeiture action pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, which unilaterally divested Petitioner of his rights and interest in the defendant assets, the Seventh Circuit also held that Petitioner was barred from contesting the Government's dismissal of the forfeiture action because he had failed to make a timely forfeiture claim. (App. 1a).

On June 4, 2010, Petitioner filed a petition with the Seventh Circuit requesting that this case either be heard initially *en banc* (because he had not yet submitted his brief and, therefore, had not been heard initially), or, in the alternative be reheard *en*

*banc*. The Seventh Circuit treated this petition as a petition for panel rehearing and rehearing *en banc*. On October 6, 2010, the Seventh Circuit issued an order denying the petition because the panel judges voted to deny the petition and none of the active judges had requested a vote on the petition for rehearing *en banc*. (App. 31a).

## REASONS FOR GRANTING THE PETITION

"While forfeiture remedies have been employed with increasing frequency in civil proceedings, forfeiture remedies and penalties are the subject of historic disfavor in our country." *Alexander v. United States*, 509 U.S. 544, 563 (1993) (Kennedy, J., dissenting). By affirming the District Court's order of dismissal, notwithstanding the impact that the order had upon Petitioner's property rights, the Seventh Circuit effectively ruled that the Government may cause an innocent party's property rights to be permanently extinguished merely by filing a forfeiture action and then subsequently dismissing that action, rather than by actually obtaining a judgment of forfeiture. In so doing, the Seventh Circuit greatly expanded the reach of the historically-disfavored remedy of forfeiture and split with prior decisions from two of its sister circuits. This petition should be granted to resolve the circuit split created by the Seventh Circuit's opinion in this case and also to resolve the critical question of whether failing to comply with the technical requirement of filing a civil forfeiture claim will result in an innocent owner forfeiting all rights to its property, even in the absence of a forfeiture judgment.

## I. This Court should grant the petition to resolve the inter-circuit conflict regarding whether, in a forfeiture action, the Government and a party can enter into an agreement that results in the deprivation of a third party's interests in property, without the consent of that third party.

Prior to the District Court granting the motion to dismiss, Petitioner had submitted to the Court uncontroverted evidence to establish that he was the rightful and innocent owner of certain of the defendant assets that had been seized from QLI. Petitioner even produced an uncontroverted affidavit from a principal of QLI, who was QLI's president at the time of the agreement with Petitioner, establishing that QLI and Petitioner had agreed that QLI was merely holding Petitioner's assets, but that ownership of those assets remained with Petitioner. (App. 33a).

Notwithstanding the uncontroverted evidence before the District Court asserting that certain of the defendant assets actually belonged to Petitioner, and not to QLI (which properly should have precluded the Boims from receiving those assets, because, pursuant to the magistrate judge's orders, the Boims only had an interest in "the assets of the Quranic Literacy Institute"), the District Court granted the motion to dismiss which was conditioned upon distributing all the defendant assets – including those belonging to Petitioner – to the Boims. The Seventh Circuit affirmed that decision.

By permitting the Government and QLI to enter into an agreement that had a determinative effect of permanently extinguishing Petitioner's interests in his property, the Seventh Circuit's ruling not only conflicts with the precedent of the Second and Ninth Circuits, but also arguably conflicts with its own prior precedent. The Second Circuit dealt with a directly analogous situation, albeit one in which there had been an actual order of forfeiture, in *United States v. Schwimmer*, 968 F.2d 1570 (2d Cir. 1992). In *Schwimmer*, the Second Circuit held that, if an order of forfeiture "requires that property be forfeited to the Government, and that property actually belongs to a third party, then . . . the Court is ordering the forfeiture of property over which it lacks jurisdiction and the order is therefore invalid." 968 F.2d at 1580. The Second Circuit further held that "[a]n order of forfeiture pursuant to a settlement agreement is equally vulnerable to invalidation by third-party interests, because a defendant's consent to forfeit property does not expand the Court's power over that property, if the property is not the defendant's own." *Id.* at 1580-81.

The Ninth Circuit agreed with the Second Circuit in *United States v. Nava*, 404 F.3d 1119 (9th Cir. 2005), in which the Ninth Circuit held that "'[a] defendant's consent to forfeit property does not expand the Court's power over that property, if the property is not the defendant's own,' . . . for the obvious reason that he cannot agree to forfeit property that belongs to someone else." 404 F.3d at 1133 (quoting *Schwimmer*, 968 F.2d at 1580-81). Plainly, an order dismissing a forfeiture action while concomitantly transferring away an innocent third party owner's property, which is entered

"pursuant to a settlement agreement is equally vulnerable to invalidation by third-party interests." *Schwimmer*, 968 F.2d at 1580. Even where there is a judgment of forfeiture, unlike herein, there is no legal vitality or enforceability to a settlement agreement which engenders the absurd concept that the parties to the agreement can "agree" to deprive a third party of his or her rights to property, much less without his or her knowledge or consent.

Not only does the Seventh Circuit's holding create a split with the Second and Ninth Circuits, but it arguably diverges from the Seventh Circuit's own precedent. In *United States v. Roberts*, 749 F.2d 404 (7th Cir. 1984), the Seventh Circuit held that "[t]he mere fact that the defendant has agreed that an item is forfeitable . . . does not make it so." 749 F.2d at 409. Instead, the Seventh Circuit held that "the trial court must ascertain whether" the property is properly forfeitable. *Id.* This Seventh Circuit case conforms to Justice Stevens' dissent in *Libretti v. United States*, 516 U.S. 29 (1995). Justice Stevens dissented in order "to emphasize the underlying proposition that the law – rather than any agreement between the parties – defines the limits on the district court's authority to forfeit a defendant's property." 516 U.S. at 55 (Stevens, J., dissenting). As Justice Stevens noted:

> It is not unthinkable that a wealthy defendant might bargain for a light sentence by voluntarily "forfeiting" property to which the government had no statutory entitlement. . . . No matter what a defendant may be willing to pay for a favorable sentence, the law defines

> the outer boundaries of permissible forfeiture. A court is not free to exceed those boundaries solely because a defendant agreed to permit it to do so.

*Id.*

This analysis holds true under the present circumstances. Merely because QLI has agreed that the Government can redirect the assets seized from QLI to the Boims, in order to avoid the costs and burdens associated with ongoing civil litigation, this does not mean that QLI actually holds the rights to agree to that redistribution. A district court may only transfer property pursuant to a settlement agreement where the property to be transferred actually belongs to the person consenting to the transfer. Where there is evidence that the party giving its consent to a transfer is not the actual owner of property, a district court is required to determine whether the consenting party actually possesses a sufficient interest in the property to give such consent.

While *Schwimmer*, *Nava*, *Roberts*, and *Libretti* involve criminal forfeiture cases, there is no substantive distinction between the analyses applied in those cases and the present facts. The Seventh Circuit's ruling authorizing the Government's agreement with QLI to redistribute Petitioner's assets to the Boims, albeit without even a judgment of forfeiture, is in stark contrast to the precedent of the Second and Ninth Circuits. Both posit that, even where there is an agreed forfeiture, a third party owner, like Petitioner, whose rights have been ignored, has been deprived of his property without

due process of law in violation of the Fifth Amendment. Accordingly, this Court should grant the petition to resolve the circuit split created by the Seventh Circuit's decision.

## II. This Court should also grant the petition to resolve the critical question that will guide future putative forfeiture claimants of whether failure to comply with the filing requirements for a forfeiture claim results in the permanent deprivation of a party's rights to its property, even without forfeiture occurring.

Despite the fact that the District Court had not made a finding nor reached any conclusion on the timeliness of Petitioner's claim, the Seventh Circuit held that Petitioner's failure to file a timely claim *per se* prevented him from attempting to block the dismissal of the forfeiture action, which was specifically conditioned upon redistributing his assets to the Boims and depriving him of his rights and interest in the defendant assets. By reaching this holding on appeal, despite the District Court having made no such finding or conclusion, the Seventh Circuit deprived Petitioner of the opportunity to appeal this determination as a matter of right. Petitioner specifically notes that there was not an adequate record from which the Seventh Circuit could have reached that determination. In fact, the issue was not relevant to the only issue litigated in the District Court – namely, whether or not to grant the motion to dismiss. Moreover, the Seventh Circuit appears to have ignored what little record there was, such as the uncontroverted affidavits from Petitioner's current United Kingdom-

based counsel and Petitioner's former United States counsel that reflect the Government's explicit requests, during much of the life of the proceeding, that Petitioner forbear from filing his claim. (App. 36a and 42a).

However, assuming, *arguendo*, that the Seventh Circuit correctly ruled that Petitioner's claim was time-barred and that there was an adequate record from which that conclusion could be reached, this would only prohibit Petitioner from contesting the forfeiture of his assets. It cannot and should not deprive him of all rights to his non-forfeited property. At least two circuits have held that the only effect of the failure to timely file a claim is to prevent a potential claimant from contesting forfeiture. *See United States v. Lot 65 Pine Meadow*, 976 F.2d 1155, 1157 (8th Cir. 1992) ("Because appellant did not file a timely claim, he lacked standing to contest the forfeiture."); *United States v. One Dairy Farm*, 918 F.2d 310, 311 (1st Cir. 1990) ("A party who fails to file a claim normally lacks standing to contest a forfeiture.").

Here, the Government did not pursue nor did it obtain forfeiture. To the contrary, the Government, having stayed the action for years, abandoned its pursuit of forfeiture and instead moved to dismiss the action. However, instead of returning Petitioner's assets either directly to him, or to QLI in order for QLI to return Petitioner's assets to him, the Government used its dismissal motion as a vehicle for transferring Petitioner's assets – in circumvention of his rights and without his consent – to the Boims. It appears that the Government took these unusual steps because there is no legal means by which

the Government could unilaterally redistribute Government property to the Boims. Thus, had a forfeiture judgment actually been entered against the defendant assets and had those assets become Government property, the Government could not have subsequently transferred those assets to the Boims. Faced with this dilemma and the order of the magistrate judge in the Boims' case against QLI, the Government chose to ignore Petitioner's rights to his property and to repudiate its previous assurances to him. Instead, it moved to dismiss its forfeiture action, but conditioned dismissal upon the requirement that all of the defendant assets originally seized from QLI, including those assets of which Petitioner was the rightful and innocent owner, were to be redistributed to the Boims. Remarkably, the Government entered into an agreement with QLI to achieve this result despite the fact that both parties to the agreement well knew that Petitioner, and not QLI, was the innocent owner of most of those assets.

Notwithstanding this circumvention of Petitioner's rights, the Seventh Circuit essentially construed Petitioner's purported failure to file a timely claim in the abandoned and terminated forfeiture action as a relinquishment of all rights to his property. Moreover, it held that such a purported failure somehow survived the Government's dismissal of its forfeiture action, thereby preventing Petitioner from challenging the post-dismissal redistribution of his assets to the Boims.

This holding has no basis in law. To the contrary, although the Government had temporarily

encumbered Petitioner's assets, because the Government ultimately has declined to pursue forfeiture of the assets, Petitioner retains his rights to his property. To the extent that Petitioner's rights were in any way limited by any purported failure to comply with the filing requirements of a forfeiture claim during the existence of the forfeiture action, any such limitation was extinguished when the Government terminated its pursuit of forfeiture.

If the Seventh Circuit's holding were allowed to stand, it would have a dramatic effect on the rights of potential claimants in civil forfeiture actions. For example, if the Government failed to obtain forfeiture of certain seized property, it could nonetheless refuse to return defendant property to its owner by then claiming that the owner had failed to comply in some manner with the filing requirements for the failed forfeiture action, and thereby permanently deprive the owner of its rights to its property – notwithstanding there never having been a forfeiture. Such a result far exceeds the permissible scope of any limitations imposed by the failure to comply with the filing requirements for a forfeiture claim – particularly where factual exceptions to the statutory requirements have been found valid. Indeed, in its order summarily affirming the District Court, the Seventh Circuit acknowledged that "special circumstances" will create an exception for strict compliance with the filing requirements for a forfeiture claim. (App. 7a) (citing *United States v. Commodity Account No. 549 54930 at Saul Stone & Co.*, 219 F.3d 595, 598 (7th Cir. 2000)). Yet, the result of permanently depriving a rightful owner of its property for a purported failure to comply with these very requirements,

despite the lack of a forfeiture judgment, is directly mandated by the Seventh Circuit's holding in this case. Accordingly, this Court should grant the petition to examine this holding and the remarkable overreaching implicated by that holding for civil forfeiture proceedings across the country.

## CONCLUSION

For the reasons stated, the Court should grant the petition.

Respectfully submitted,

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# APPENDIX

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[ENTERED: May 21, 2010]

**United States Court of Appeals**
For the Seventh Circuit
Chicago, Illinois 60604

CERTIFIED COPY

Submitted May 11, 2010
Decided May 21, 2010

Before

RICHARD A. POSNER, Circuit Judge

TERENCE T. EVANS, Circuit Judge

ANN CLAIRE WILLIAMS, Circuit Judge

| | |
|---|---|
| UNITED STATES OF AMERICA,<br>Plaintiff-Appellee, | ]<br>] |
| No. 10-1758 v. | ] |
| ONE 1997 E35 FORD VAN, VIN 1FBJS31L3VHB70844, et al.,<br>Defendants. | ]<br>]<br>] |
| APPEAL OF: YASSIN A. KADI,<br>Claimant | ]<br>] |

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:98-cv-03548

Wayne R. Andersen, Judge.

The following are before the court:

1. **MOTION TO STAY TURNOVER OF ASSETS PENDING APPEAL**, filed on April 22, 2010, by counsel for the appellant.

2. **GOVERNMENT'S RESPONSE TO THE COURT'S ORDER OF APRIL 23, 2010, DIRECTING THE GOVERNMENT TO "FILE A RESPONSE ADDRESSING THE MERITS OF THE APPEAL,"** filed on April 28, 2010, by counsel for the appellee.

3. **JOYCE AND STANLEY BOIM'S MOTION TO INTERVENE TO PROTECT THEIR LIEN ON ASSETS INVOLVED IN UNDERLYING FORFEITURE PROCEEDING AND TO FILE THEIR OPPOSITION TO KADI'S MOTION TO STAY TURNOVER OF ASSETS PENDING APPEAL**, filed on April 30, 2010, by counsel for the proposed intervenors.

4. **YASSIN A. KADI'S MOTION TO STRIKE THE GOVERNMENT'S OVERSIZED RESPONSE TO HIS MOTION TO STAY TURNOVER OF ASSETS PENDING APPEAL**, filed on May 5, 2010, by counsel for the appellant.

5. **YASSIN A. KADI'S REPLY, IN THE ALTERNATIVE, TO THE**

**GOVERNMENT'S RESPONSE TO HIS MOTION TO STAY TURNOVER OF ASSETS PENDING APPEAL**, filed on May 5, 2010, by counsel for the appellant.

6. **YASSIN A. KADI'S RESPONSE IN OPPOSITION TO JOYCE AND STANLEY BOIM'S MOTION TO INTERVENE AND TO FILE THEIR OPPOSITION TO HIS MOTION TO STAY TURNOVER OF ASSETS PENDING APPEAL**, filed on May 10, 2010, by counsel for the appellant.

7. **THE BOIMS' REPLY TO YASSIN A. KADI'S OPPOSITION TO THEIR MOTION TO INTERVENE AND TO FILE THEIR OPPOSITION TO MR. KADI'S MOTION TO STAY TURNOVER OF ASSETS PENDING APPEAL**, filed on May 19, 2010, by counsel for the proposed intervenors.

Appellant Yassin A. Kadi seeks to stay the government's turn over of certain assets seized in the underlying forfeiture proceeding. Kadi attempted to intervene in the district court and stay the turn over, claiming an interest in $820,000 of the seized assets, but the parties already had filed a motion for stipulated dismissal. The district court concluded that the stipulated dismissal was effective upon filing, and it had no authority to give any effect to Kadi's objection because he lacked standing in the case. Kadi appealed and seeks to stay the turn over pending resolution of the appeal.

The government commenced this forfeiture action in 1998 and seized funds from three Quranic Literacy Institute (QLI) bank accounts, totaling $1,015,339.22. The case was effectively stayed for over ten years to allow related civil and criminal matters to be completed. On December 1, 2009, the government and QLI filed an agreed motion to dismiss, which provided that the "dismissal proposed by the United States is expressly subject to and conditioned upon the transfer to the Boims of the [defendant] assets." Joyce and Stanley Boims, who were not involved in the forfeiture proceedings, had obtained a $156,000,000 judgment against QLI, *see Boim v. Holy Land Foundation*, 549 F.3d 685 (7th Cir. 2008) (en banc), which they used to perfect a lien, secondary only to the government's interest, on the assets that had been seized from QLI. The Boims obtained a turnover order directing the United States Department of Justice and the United States Marshal Service to turn over the funds that are subject to the forfeiture action in the event of an order dismissing the action or otherwise finding against the government's rights of forfeiture.

Kadi argues the district court incorrectly held that the motion to dismiss filed by the government and QLI satisfied Federal Rule of Civil Procedure 41(a)(1) and therefore was effective upon filing. Rule 41(a)(1)(A)(ii) permits the plaintiff to dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared. Dismissal pursuant to Rule 41(a)(1) is complete without any action by the district court. *Nat. Inspection & Repairs, Inc. v. George S. May Inter. Co.*, 600 F.3d 878, 883 (7th Cir. 2010). Because the dismissal here required the seized assets to be turned

over to the Boims, Kadi argues that the dismissal was conditional, it could not have been effective when it was filed, and the district court should have considered his objection to the dismissal. This argument, however, confuses action that must be taken by the court and action agreed to by the parties as a condition of settlement. Federal Rule of Civil Procedure 41(a)(2) permits dismissal of an action at the plaintiff's request only by court order setting forth the terms that the court considers proper. A dismissal under Rule 41(a)(1)(A)(ii), in contrast, is by stipulation between the parties and the court cannot impose terms and conditions. The parties, however, are free to negotiate the conditions on which they agree to the stipulation. 9 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 2366 (3d ed. 2010). *See also* Moore's Federal Practice § 41.34[4][d] (3d ed. 2008) ("The parties are free to include in their stipulation whatever terms or conditions they deem appropriate . . . ."). The Supreme Court has noted that "[e]ven when, as occurred here, the dismissal is pursuant to Rule 41(a)(1)(ii) (which does not by its terms empower a district court to attach conditions to the parties' stipulation of dismissal) we think the court is authorized to embody the settlement contract in its dismissal order (or, what has the same effect, retain jurisdiction over the settlement contract) if the parties agree." *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 381-82 (1994). *See also DiMucci v. DiMucci*, 91 F.3d 845, 847 (7th Cir. 1996) (per curiam) (noting that district court may enter stipulated dismissal conditioned upon terms of settlement agreement and may retain jurisdiction over enforcement). The mere fact that the

government and QLI agreed that the government would distribute the seized assets to the Boims upon dismissal of the forfeiture proceedings does not render their stipulation conditional or require the court to enter a dismissal order. In compliance with Rule 41(a)(1)(A)(ii), all the parties who had appeared stipulated to the dismissal of the action and agreed upon its terms.

Kadi further argues that the $820,000 to which he claims an interest should not be included in the assets turned over to the Boims because this amount is not actually an asset of QLI. The turnover order provided that the Boims had perfected a lien upon "the assets of the Quranic Literacy Institute which are currently subject to civil forfeiture." Had the district court given him a chance, Kadi believes he could have established that he is the rightful owner of the $820,000 and that QLI, and therefore the Boims, have no interest in these funds. According to Kadi, he loaned QLI $820,000 in 1991 so that it could purchase land. When QLI sold that property, he agreed QLI would hold $820,000 in proceeds for the specific purpose of placing it in a religious charitable trust to acquire new property. Kadi argues that under Illinois law, his initial loan had been converted to a bailment with QLI as the bailee and he remained the owner of the $820,000, with the right to demand its return at any time up to the purchase of the new property. Because he could demand the $820,000 at any time, Kadi argues that this portion of the seized assets was not an asset of QLI and therefore is not subject to the turnover order.

Kadi, however, failed to make a timely claim that the $820,000 should not have been included as assets of QLI in the forfeiture proceedings. Nor did he make any attempt to seek repayment of the loan from QLI for years – either in the years leading up to the June 1998 seizure or in the eleven years after the forfeiture action was filed. At best, Kadi is an unsecured creditor of QLI whose claim to the seized assets comes years too late. The government provided notice of the forfeiture action by certified mail to the certified agent of Kadi International Corp., because it was the beneficiary of a $820,000 note due and payable on December 31, 1993, relating to a property owned by QLI, even though the note was never recorded and the property to which it related was sold in 1994. Notice also was published in the Tribune that directed any claim be filed within 10 days of the notice or the last date of publication, which was September 3, 1998. In addition, Kadi has admitted having actual notice of the forfeiture action in the summer of 1998. Despite his contention that he did not file a claim at the request of the Assistant United States Attorney handling the forfeiture proceeding, Kadi's lawyers did not meet with the AUSA until December 2003, over five years after the claim should have been filed. This court has held that it is proper "for the district court to insist on strict compliance with Rule C(6) to establish standing" in the absence of special circumstances. *United States v. Commodity Account No. 549 54930 at Saul Stone & Co.*, 219 F.3d 595, 598 (7th Cir. 2000) (citing to Fed. R. Civ. P., Supp. R. C(6) which requires a verified claim within ten days after process has been executed). Kadi has not made any argument why he did not file a verified claim to

the seized assets in 1998. *See also United States v. U.S. Currency in the Amount of $2,857.00*, 754 F.2d 208, 212 (7th Cir. 1985) (noting that the court could find only a single case, from the Middle District of North Carolina, in which the court allowed a claimant to be heard despite technical noncompliance with Rule C(6) and that was only because the claimant had filed a motion and affidavits with the court). Any assurances made in 2003 cannot cure his failure to timely file a verified claim.

The Boims have filed a motion to intervene to protect their lien on the assets seized in the forfeiture proceedings and to oppose Kadi's motion to stay the turnover of the assets, but it is unnecessary to rule on this motion in light of our resolution of the appeal. Kadi also seeks to strike the government's response because it contains too many pages to comply with the requirements of Fed. R. App. P. 27(d)(2). We construe the government's filing as a request for leave to file an oversized response and permit its filing.

The district court correctly held that the dismissal of the forfeiture proceeding was effective upon its filing pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii). Kadi's attempt to intervene to make a claim to a portion of the assets was untimely and the district court properly refused to consider it. In light of the straightforward nature of the issues presented, which are fully addressed in the parties' motions papers, no briefing or oral argument is necessary.

**IT IS ORDERED** that the motion to stay turnover of assets is **DENIED** and the order of the district court is summarily **AFFIRMED.**

[ENTERED: March 22, 2010]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, )
)
Plaintiff, )
)
v. )
)
ONE 1997 E35 FORD VAN, )
VIN:IFBJS31L3VHB70844, et al., )
)
Defendants. )

No. 98 C 3548

Wayne R. Andersen
District Judge

MEMORANDUM OPINION

The United States commenced this civil forfeiture action more than eleven years ago on June 9, 1998 when it filed a verified complaint seeking forfeiture of certain property of the Quranic Literacy Institute ("QLI"). Based on the complaint, the government seized funds from accounts that QLI maintained at First National Bank of Chicago, Midland Federal Savings & Loan and First National Bank: of Evergreen Park in amounts totaling approximately $1,015,339.22. Additionally, the government seized a 1997 E35 Ford Van purchased by QLI. All of the foregoing assets are

referred to collectively hereinafter as the "Seized QLI Assets."

In addition to the instant forfeiture action, the Seized QLI Assets were the subject of separate civil action entitled *Stanley Boim, Individually and as Administrator of the Estate of David Boim, deceased, and Joyce Boim v. Quranic Literacy Institute*, Case No. 00 C 2905. In that action, Stanley Boim, individually and as the Administrator of the Estate of David Boim, and Joyce Boim (the "Boims") won a civil judgment against QLI, Mohammed Salah, and other defendants in the amount of $156,000,000. The United States was not a party to this civil action.

Having won a civil judgment against QLI, the Boims sought to execute their judgment against the Seized QLI Assets in the event that the United States dismissed its forfeiture action or was otherwise unsuccessful in the matter. On April 24, 2006, Magistrate Judge Arlander Keys entered a turnover order in the Boim's civil case against QLI (the "Turnover Order"). *See Boim v. Quranic Literacy Institute*, Case No. 00 C 2905, 4/24/2006 Order [Docket #805]. The Turnover Order stated that the Boims had "perfected a lien upon the assets of the [QLI] which are currently subject to civil forfeiture pursuant to [the instant civil forfeiture action] second to the Federal Government." *Id.* The Turnover Order further provided that "QLI shall turn over all such funds to plaintiffs in the event of the entry of any order by the [this court] dismissing the Forfeiture Action." *Id.* On January 30, 2009, recognizing that the United States government had possession of the Seized QLI Assets, Judge Key's Turnover Order was supplemented and specifically

directed the Department of Justice and the U.S. Marshals Service to turn over the Seized QLI Assets to the Boims in the event that the instant civil forfeiture action was dismissed. *See Boim v. Quranic Literacy Institute*, Case No. 00 C 2905, 1/30/2009 Order [Docket # 839].

On December 1, 2009, pursuant to Federal Rule 41(a)(1), the United States filed a stipulated motion to dismiss its civil forfeiture action against the Seized QLI Assets. The motion contemplated that, upon dismissal, the Seized QLI Assets would be transferred by the United States to the Boims, consistent with the order of Magistrate Judge Keys. Turnover of the Seized QLI Assets to anyone other than the Boims upon dismissal of this case would be in direct contravention of Magistrate Judge Keys' Turnover Order.

On December 11, 2009, Yassin Kadi filed a Claim of Interest in this forfeiture action. On the same day, Kadi also filed an objection to the government's agreed motion to dismiss the civil forfeiture action against the Seized QLI Assets. In his objection, Kadi asserts that he loaned $820,000 to QLI in July 1991, almost seven years before this forfeiture case was initiated. Notably, Kadi did not assert that he had a security interest in any of the Seized QLI Assets, that he was a signatory on any of the seized QLI bank accounts, nor that he had taken any steps in the prior 18 plus years to collect the alleged $820,000 debt from QLI.

In his objection, Kadi states that his counsel met with Assistant United States Attorney Joseph Ferguson more than six years ago in Washington

D.C. about the Seized QLI Assets. However, Kadi did not state in the objection why he had not filed a claim in this case prior to the meeting, nor did Kadi claim that he did not have prior actual notice of this proceeding. Rather, Kadi's objection contains an unsworn allegation that Kadi did not file a claim subsequent to the meeting because of certain statements he alleges were made by the government requesting that he not take any action. We now must determine whether the Claim of Interest filed by Mr. Kadi can have any effect on the adjudication of the this case, specifically whether the agreed motion to dismiss filed the parties should be granted.

Federal Rule 41(a)(1)(A)(ii) provides, with certain exceptions that are not applicable here, that "the plaintiff may dismiss an action without a court order by filing a stipulation of dismissal signed by all parties who have appeared." A voluntary dismissal that satisfies the requirements of Rule 41(a)(1)(A) is effective upon filing and divests the court of authority to impose conditions or exercise discretion. *In re Matthews*, 395 F.3d 477 (4th Cir. 2005) ("Once the United States voluntarily dismissed its forfeiture action [pursuant to Rule 41(a)(l)(A)(i)], all proceedings in the action were terminated, and the district court lacked the authority to issue further orders addressing the merits of the case."); *Jenkins v. Village of Maywood*, 506 F.3d 622, 624 (7th Cir. 2007) (observing that court's dismissal order "was superfluous because under Rule 41(a), the [stipulated] dismissal was effective immediately upon the filing of the Stipulation"); *Smith v. Phillips*, 881 F.2d 902, 904 (10th Cir. 1989) ("A voluntary dismissal by stipulation under Rule 41(a)(l)(A)(ii) is of right, cannot be conditioned by the court, and does

not call for the exercise of any discretion on the part of the court."); *In re Wolf*, 842 F.2d 464, 470 (D.C.Cir. 1988) ("Case law concerning stipulated dismissals under Rule 41(a)(l)(A)(ii) is clear that the entry of such a stipulation of dismissal is effective automatically and does not require judicial approval.") (quoting *Gardiner v. A.H. Robbins Co., Inc.*, 747 F.2d 1180, 1189 (8th Cir. 1984)).

The fact that the stipulated agreement to dismiss was captioned as a motion rather than a notice has no bearing on its effectiveness in immediately dismissing the case. In *Smith v. Potter*, a case involving a voluntary dismissal prior to the filing of an answer under Rule 41(a)(l)(A)(i), the Seventh Circuit held that the district court was not authorized to enter an order dismissing a suit with prejudice after the plaintiff had filed a "miscaptioned motion" to voluntarily dismiss the case without prejudice. 513 F.3d 781, 782 (7th Cir. 2008). The Seventh Circuit observed that the judge's order dismissing the case with prejudice was improper because the "miscaptioned motion itself effected the dismissal of the suit: the case was gone; no action remained for the district judge to take." *Id. See also Garber v. Chicago Mercantile Exchange*, 570 F.3d 1361, 1366 n.3 (Fed. Cir. 2009) ("*Smith* stands for the principal that when the requirements of Rule 41(a)(l)(A) are met, the form in which the dismissal is presented is not controlling."); *Williams v. Ezell*, 531 F.2d 1261, 1263 (5th Cir. 1976) (holding that plaintiffs dismissal under Rule 41(a)(l) was effective upon filing, and the fact that "it was styled a 'Motion for Dismissal' rather than a 'Notice of Dismissal' [was] a distinction without a difference").

Once the agreement between the United States and QLI (the only remaining party who had made an appearance in this case) was filed, it became effective under the stipulated terms immediately upon filing. *McCall-Bey v. Franzen*, 777 F.2d 1178, 1185 (7th Cir. 1985) ("Rule 41(a)(1)(A)(ii) requires that the stipulation be filed in court, and the date of filing is the date the dismissal takes effect."). That the parties chose to style the dismissal as a motion with an order to effectuate its terms does not alter its character as a final disposition of the case which the court must enter as the parties agreed.

Because the stipulated dismissal of this action conformed with Federal Rule 41(a)(I)(A)(ii), it was effective upon filing. Therefore, this court does not have the authority to give any effect to Kadi's objection. Because we have concluded that we do not have the authority to consider Kadi's objection, we also decline to rule on the Boim's motion to intervene.

For all of the reasons set forth in the court's Memorandum Opinion, this matter is dismissed pursuant to the agreed motion to dismiss certain defendant assets. The court enters herewith the Agreed Order Dismissing Certain Defendant Asserts. All pending motions are denied as moot.

It is so ordered.

[/s/ Wayne R. Andersen]
Wayne R. Andersen
United States District Court

Dated: March 22, 2010

[ENTERED: March 22, 2010]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| UNITED STATES OF AMERICA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| ONE 1997 E35 FORD VAN, VIN:IFBJS31L3VHB70844, ET AL., | ) |
| | ) |
| Defendants. | ) |

No. 98 C 3548

Judge Wayne R. Andersen

## AGREED ORDER DISMISSING CERTAIN DEFENDANT ASSETS

This cause coming before the Court on an agreed motion for entry of an order dismissing certain defendant assets, due notice having been given and the Court being fully advised in the premises, FINDS as follows

(a) On June 9, 1998, the United States filed a verified complaint seeking forfeiture of the defendant property, specifically identified as follows:

| ID | Property | Value | Seized |
|---|---|---|---|
| 1 | 1997 Ford Van, Vin: 1FBJS31L3VHB70844 | | QLI |
| 2 | All Funds in First National Bank of Chicago, Account No. 12310153 | $799,421.08 | QLI |
| 3 | All Funds in Midland Federal Savings & Loan Account No. 001093002113 | $196,840.94 | QLI |
| 4 | All Funds in First National Bank of Evergreen Park, Account 1412446 | $19,077.20 | QLI |
| 5 | All Funds in Standard Bank & Trust Account No. 580349268 | $125,415.74 | Salah |
| 6 | All Funds in Standard Bank & Trust Account No. 239328806 | $2,320.93 | Salah |
| 7 | All Funds in Standard Bank & Trust Safe Deposit Box Number 207 | $0 | Salah |
| 8 | All Funds in Standard Bank & Trust Safe Deposit Box Number 4019 | $0 | Salah |

| ID | Property | Value | Seized |
|---|---|---|---|
| 9 | All Funds in First National Bank of Chicago Account Number 8060700 | $64,868.18 | Salah |
| 10 | All Funds in Lasalle Bank F.S.B. Account Number 022034532 | $3,413.75 | Salah |
| 11 | Real Property at 9229 South Thomas, Bridgeview, Illinois PIN: 23-01-404-012 | $250,000 | |

(b) In its verified complaint, the government alleges that the foregoing defendant properties are forfeitable pursuant to 18 U.S.C. § 981(a)(1)(A);

(c) On June 9, 1998, this Court issued warrants of seizure and monition to be executed by the United States Marshal Service against the defendant properties. On July 7, 1998, the United States Marshal executed the warrants of seizure and monition and personally served the defendant properties;

(d) The United States Marshals Service gave notice of this action to all known potential claimants and record owners by certified mail. (*See* Document Nos 1-19);

(e) Pursuant to Rule C of the Supplemental Rules Governing Certain Admiralty and Maritime

Claims, the United States Marshals Service published notice on July 30, 1998 and September 3, 1998 in the *Chicago Tribune*, directing that any claim be filed within 10 days of notice or the last date of publication and any answer be filed within 20 days of the filing of the claim. (*See* Document No. 22);

(f) On June 11, 1998 and June 19, 1998, Muhammad Salah ("Salah") and Maryam Azita Salah ("Azita Salah") each filed verified claims to the property identified with reference numbers 5 through 11 on the chart in ¶ a above. The claims filed by Salah and Azita Salah include the following four defendant bank accounts: All Funds in Standard Bank & Trust Account Nos. 580349268 and 239328806, All Funds in First National Bank of Chicago Account No. 8060700, All Funds in Lasalle Bank F.S.B. Account No. 022034532, as well as the defendant Real Property located at 9229 South Thomas, Bridgeview, Illinois ("Bridgeview property") (see ID numbers 5, 6, 9, 10 and 11 on the chart in ¶ a above). Salah's claim also included All Funds in Standard Bank & Trust Safe Deposit Box Number 207 and 4019 (see ID numbers 7 and 8 on the chart in ¶ a above);

(g) On June 17, 1998, the Quranic Literacy Institute ("QLI") filed a claim to the remaining defendant properties: 1997 Ford Van, VIN: 1FBJS31L3VHB70844, All Funds in First National Bank of Chicago, Account No. 12310153 ($799,421.08), All Funds in Midland Federal Savings & Loan Account No. 001093002113 ($196,840.94), and All Funds in First National Bank of Evergreen

Park, Account 1412446 ($19,077.20) (see ID numbers 1 through 4 on the chart in ¶ a above);

(h) To date, no other parties have filed a claim to contest the forfeiture of the defendant properties, and the time to do so has expired;

(i) On November 19, 2009, this Court entered a Stipulated Decree of Forfeiture in which all right, title, and interest in the defendant Funds in Standard Bank & Trust Account Nos. 580349268 and 239328806, All Funds in First National Bank of Chicago Account No. 8060700, All Funds in Lasalle Bank F.S.B. Account No. 022034532, as well as any and all funds in Standard Bank & Trust Safe Deposit Box Number 207 and 4019, were ordered forfeit to the United States of America. Further, all right, title, and interest in 50% of the defendant real property located at 9229 South Thomas, Bridgeview, Illinois was ordered forfeit to the United States (see ID numbers 5 through 11 on the chart in ¶ a above);

(j) On May 12, 2000, a Complaint entitled *Stanley Boim, Individually and as Administrator of the Estate of David Boim, deceased, and Joyce Boim v. Quranic Literacy, et al*, 00 C 2905 was filed in the United States District Court for the Northern District of Illinois, in which the plaintiff sought special injunctive relief including an order setting aside, for the benefit of the plaintiffs in the case, the funds seized in this case;

(k) On February 18, 2005, the District Court entered a final judgment in favor of Stanley and Joyce Boim (the "Boims") and against QLI and other defendants in the amount of $156 million. The

Court amended that judgment on February 25, 2005 to include other defaulted defendants;

(l) On April 24, 2006, an Order for a Conditional Turnover Order of Forfeited QLI Assets was entered in 00 C 2905 in which the Plaintiff perfected its judgment lien upon the assets of defendant QLI, including but not limited to the assets specified in items 1 through 4 on the chart in ¶ a above, with such lien junior in priority only to the claims of the Federal Government;

(m) On January 30, 2009, an Order was entered in 00 C 2905 to Supplement the Court's April 24, 2006 Turnover Order directing the United States to turn over all of QLI's assets and funds to the Boims in the event of the entry of any order by the United States District Court for the Northern District of Illinois dismissing the forfeiture action or otherwise finding against the government's rights of forfeiture;

(n) In consideration of the facts and circumstances of this matter, and subject to the terms and conditions provided in this Order, the United States agrees to dismiss without costs the forfeiture action against the defendant QLI assets specified in items 1 through 4 on the chart in ¶ a above. The dismissal proposed by the United States is expressly subject to and conditioned upon the transfer to the Boims of the QLI assets specified in items 1 through 4 on the chart in ¶ a above, consistent with the prior orders of the District Court in 00 C 2905;

(o) In consideration of the plaintiffs in 00 C 2905 returning to the defendant QLI the library of books previously turned over in that case, the QLI, through counsel, likewise agrees to the entry of an order dismissing from the forfeiture action without costs the defendant QLI specified in items 1 through 4 on the chart in ¶ a above, with such dismissal expressly subject to and conditioned upon the transfer to the Boims of the QLI assets specified in items 1 through 4 on the chart in ¶ a above, consistent with the prior orders of the District Court in 00 C 2905. QLI, through counsel, further agrees to release and hold harmless the United States, its agents and employees, and any state or local authorities, from any and all claims, suits, or demands made upon them, of whatever nature, arising out of or related in any way to the investigation, seizure, detention, or release of the defendant QLI assets.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that:

1. The agreed motion for entry of an Order to Dismiss Certain Defendant Assets is granted. It is further ordered,

2. That, the defendant 1997 Ford Van, Vin: 1FBJS31L3VHB70844, All Funds in First National Bank of Chicago, Account No. 12310153, All Funds in First National Bank of Evergreen Park, Account 1412446, All Funds in Standard Bank & Trust Safe Deposit Box Number 207, and All Funds in Standard Bank & Trust Safe Deposit Box Number 4019 (see ID 1, 2, 3, 4, 7 and 8 in paragraph (a) above) are hereby dismissed from this case, subject

to the perfected judgment lien encumbering these assets in favor of the Boims (the "QLI Turnover Assets"); It is further ordered,

3. That, the United States Marshal Service shall release and turn over the foregoing defendant QLI Turnover Assets to the Boims in care of their attorneys and authorized agents, the law firm of Wildman, Harrold, Allen & Dixon LLP; It is further ordered,

4. That, Stanley Boim, Individually and as Administrator of the Estate of David Boim, shall hereby accept said release and turnover in full and complete satisfaction of any and all claims which he might have against the United States, its agents and employees, and any state or local authorities, arising from the seizure of the QLI Turnover Assets. It is further ordered,

5. That, Stanley Boim, Individually and as Administrator of the Estate of David Boim shall save and hold harmless the United States, its agents and employees, and any state or local authorities, from any and all claims, suits, or demands made upon them, of whatever nature, arising out of or related in any way to the investigation, seizure, detention, or release of the QLI Turnover Assets. It is further ordered,

6. That, the Quranic Literacy Institute shall save and hold harmless the United States, its agents and employees, and any state or local authorities, from any and all claims, suits, or demands made upon them, of whatever nature, arising out of or related in any way to the

investigation, seizure, detention, or release of the QLI Turnover Assets. It is further ordered,

7. That, Stanley Boim, Individually and as Administrator of the Estate of David Boim, the United States, and the QLI each shall bear their own attorneys' fees and costs. It is further ordered,

8. This court shall retain jurisdiction in this matter to take additional action and enter further orders as necessary to implement and enforce this forfeiture order.

ENTERED:

[/s/ Wayne R. Andersen]
WAYNE R. ANDERSEN
United States District Court

DATED: March 22, 2010

[ENTERED: December 8, 2004]

**United States District Court,**
**Northern District of Illinois**

| Name of Assigned Judge or Magistrate Judge | Arlander Keys | Sitting Judge if Other than Assigned Judge | |
|---|---|---|---|
| CASE NUMBER | 00 C 2905 | DATE | 12/8/04 |
| CASE TITLE | Boim vs. Quranic Literacy | | |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

| |
|---|
| |

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due ____.

(3) ☐ Answer brief to motion due ____. Reply to answer brief due ____.

(4) ☐ Ruling/Hearing on ____ set for ____ at ____.

(5) Status hearing [held/continued to] [set for/re-set for] on ____ set for ____ at ____.

(6) ☐ Pretrial conference [held/continued to] [set for/re-set for] on ____ set for ____ at ____.

(7) ☐ Trial [set for/re-set for] on ____ at ____.

(8) ☐ [Bench/Jury trial] [Hearing] held/ continued to ____ at ____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs [by/ agreement/pursuant to]

☐ FRCP4(m) ☐ Local Rule 41.1
☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Trial ends. Jury returns verdict in favor of Plaintiffs and against the defendants Quaranic Literacy Institute, Holy Land Foundation for Relief and Development, Islamic Association for Palestine, American Muslim Society and Muhammed Abdul Hamid Khalil Salah in the amount of $52,000,000 (fifty-two million dollars). The Court hereby triples the amount of the jury verdict to One Hundred Fifty Six Million Dollars ($156,000,000) plus the reasonable attorneys fees and costs of this action.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

| | | | | |
|---|---|---|---|---|
| | No notices required, advised in open court. | | | Document Number |
| | No notices required. | | number of notices | |
| | Notices mailed by judge's staff. | | DEC 10 2004 | 667 |
| | Notified counsel by telephone. | | date docketed | |
| ✔ | Docketing to mail notices. | | [/s/] docketing deputy initials | |
| | Mail AO 450 form. | | | |
| | Copy to judge/ magistrate judge. | | | |
| AC6 | courtroom deputy's initials | Date/time received in central Clerk's Office | date mailed notice | |
| | | | mailing deputy initials | |

[ENTERED: April 24, 2006]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| STANLEY BOIM, Individually and as Administrator of the Estate of David Boim, Deceased, and JOYCE BOIM, | ) |
| Plaintiffs, | ) |
| v. | ) |
| QURANIC LITERACY INSTITUTE, *et al.*, | ) |
| Defendants. | ) |

Civil No. 00 C 2905

Magistrate Judge Arlander Keys

**ORDER**

This cause coming to be heard on Plaintiff's Motion for a Conditional Turnover Order of Forfeited QLI Assets (Dkt. 788), due notice having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Plaintiffs' motion is GRANTED;

2. Plaintiffs have perfected a lien upon the assets of the Quranic Literacy Institute ("QLI") which are currently subject to civil forfeiture pursuant to the action *United States v. One 1997*

*E35 Ford Van*, No. 98 C 3548 (N.D. Ill.) (the "Seized QLI Assets") second to the Federal Government;

3. QLI shall turn over all such funds to plaintiffs in the event of the entry of any order by the United States District Court for the Northern District of Illinois dismissing the Forfeiture Action or otherwise finding against the government's rights of forfeiture;

4. QLI is barred from taking any action to recover the Seized QLI Assets;

[/s/ Arlander Keys, 4/24/06]
ARLANDER KEYS
UNITED STATES MAGISTRATE JUDGE

[ENTERED: January 30, 2009]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | |
|---|---|
| STANLEY BOIM, Individually and as Administrator of the Estate of David Boim, Deceased, and JOYCE BOIM, | ) |
| Plaintiffs, | ) |
| v. | ) |
| QURANIC LITERACY INSTITUTE, *et al.*, | ) |
| Defendants. | ) |

Civil No. 00 C 2905

Magistrate Judge Arlander Keys

ORDER

This cause coming to be heard on Plaintiff's Motion to Supplement the Court's April 24, 2006 Turnover Order (Dkt. 805), due notice having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Plaintiffs' motion is GRANTED;

2. Plaintiffs have perfected a lien upon the assets of the Quranic Literacy Institute ("QLI") which are currently subject to civil forfeiture

pursuant to the action *United States v. One 1997 E35 Ford Van*, No. 98 C 3548 (N.D. Ill.) (the "Seized QLI Assets") second to the Federal Government; and

3. The United States Department of Justice and the United States Marshal Service are directed to turn over all such funds to plaintiffs in the event of the entry of any order by the United States District Court for the Northern District of Illinois dismissing the Forfeiture Action or otherwise finding against the government's rights of forfeiture.

[/s/ Arlander Keys, 1/30/09]
ARLANDER KEYS
UNITED STATES MAGISTRATE JUDGE

[ENTERED: October 6, 2010]

**United States Court of Appeals**
**For the Seventh Circuit**
**Chicago, Illinois 60604**

October 6, 2010

*Before*

RICHARD A. POSNER, *Circuit Judge*

TERENCE T. EVANS, *Circuit Judge*

ANN CLAIRE WILLIAMS, *Circuit Judge*

No. 10-1758

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,*

*v.*

ONE 1997 E35 FORD VAN, VIN 1FBJS31L3VHB70844, *et al.*,
*Defendants.*

APPEAL OF: YASSIN A. KADI,
*Claimant.*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 1:98-cv-03548

Wayne R. Andersen, *Judge.*

## ORDER

On June 4, 2010, attorneys for claimant Yassin A. Kadi filed a petition for rehearing and petition for rehearing *en banc*. All the judges on the original panel have voted to deny the petition, and none of the active judges has requested a vote on the petition for rehearing *en banc*. The petition is therefore DENIED.

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

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|---|---|
| UNITED STATES OF AMERICA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| ONE 1997 E35 FORD VAN, VIN:IFBJS31L3VHB70844, et al., | ) |
| | ) |
| Defendants. | ) |

No. 98 C 3548

Judge Andersen

**AFFIDAVIT OF DR. AHMAD ZAKI HAMMAD**

1. I make this Affidavit based upon my personal knowledge and to the best of my recollection.

2. I presided over the Quranic Literacy Institute ("QLI").

3. On July 19, 1991, Yassin A. Kadi ("Mr. Kadi"), loaned $820,000 to QLI. Mr. Kadi loaned that $820,000 for the purchase of land at Woodridge, Illinois, USA ("the Woodridge land"). An $820,000 mortgage lien was executed as security upon that loan. The loan was legally documented and negotiated.

4. Subsequently, in 1994, the Woodridge land was sold. At that time, QLI and Mr. Kadi agreed that QLI would hold $820,000 from the proceeds of the sale for a specific purpose, namely for those funds to eventually be used as a religious charitable trust for the purpose of QLI acquiring premises, which Mr. Kadi proposed be named after his late father. Once that purpose was fulfilled, by QLI locating, identifying, and arranging for the purchase of new property in the State of Illinois, Mr. Kadi's funds were to be used, as in the preceding acquisition, according to Mr. Kadi's specific directions by using those funds solely to purchase the new property for QLI premises.

5. The proceeds of the sale of the initial property remained undisturbed in a bank account until 1998 while QLI set about searching for new property. During this period, it was understood that while QLI was holding the proceeds of the sale of the Woodridge land, Mr. Kadi remained the owner of the $820,000 which he had previously loaned to QLI. Until QLI purchased new property using those assets, an event which never occurred due to the Government's seizure, Mr. Kadi retained ownership over the $820,000, because, at any time up to the purchase of that new property, Mr. Kadi had the right to demand the return of his assets, which QLI was merely holding.

I solemnly affirm under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my personal knowledge and recollection.

[/s/ Ahmad Zaki Hammad]
Dr. Ahmad Zaki Hammad
[March 2 / 2010]

VERIFICATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on February __, 2010.

[/s/ Ahmad Zaki Hammad]
Dr. Ahmad Zaki Hammad
[March 2 / 2010]

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION**

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|---|---|
| UNITED STATES OF AMERICA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| ONE 1997 E35 FORD VAN, VIN IFBJS31L3VHB70844, et al. | ) |
| | ) |
| Defendants. | ) |

No. 98 C 3548

Judge Andersen
Magistrate Judge Bobrick

**AFFIDAVIT OF GUY FREDERICK NOEL MARTIN, ESQ.**

1. I, Guy Frederick Noel Martin, Esq., state as follows:

2. I am a Solicitor of the Superior Court of England and Wales and a partner in the law firm of Carter-Ruck of 6 St Andrew Street, London EC4A 3AE. Together with my partner Cameron Doley and consultant Maitre Saad Djebbar, I have represented Yassin A. Kadi, a claimant in this action, since approximately October 2001. In that regard, nothing in this Affidavit is intended to waive any attorney-client, work product or other applicable privilege.

3. During the course of my representation of Mr. Kadi, I was instructed by Mr Kadi that he loaned $820,000 to the Quranic Literacy Institute ("QLI") of Chicago Illinois, another claimant in this action, on July 19, 1991, for the purchase of land at Woodridge, Illinois, USA ("the Woodridge land"). The loan was legally documented and the terms were negotiated by lawyers acting on both sides. Subsequently, in 1994, the Woodridge land was sold and Mr. Kadi authorized QLI to hold the proceeds of sale as a religious charitable trust for the purpose of QLI acquiring new premises. The proceeds of the sale remained undisturbed in a bank account until 1998 while QLI set about searching for new premises. In Spring 1998 QLI identified suitable new premises and while QLI were in the process of negotiations for the purchase of these new premises, but before the purchase could be concluded, the money was seized by the U.S. Government as part of this forfeiture action. Although the seizure completely frustrated the agreed purpose, no funds have been repaid by QLI to Mr. Kadi.

4. On December 16, 2003, Mr. Kadi's then-U.S. legal counsel, Stanton D. Anderson, Esq., at that time a partner in the law firm of McDermott Will and Emery, Maitre Djebbar, and I met at the Washington D.C. offices of McDermott Will and Emery with then-Assistant United States Attorney ("AUSA") Joseph M. Ferguson and FBI Special Agents Robert Holley and David D. Bray with respect to this matter. Also in attendance at the meeting was former-FBI agent Thomas Locke, whose company consults for Mr. Kadi, and who is well known in federal law enforcement circles.

5. At that meeting, we made clear to AUSA Ferguson that certain of the funds seized from QLI, namely the $820,000 loaned to QLI by Mr. Kadi, were actually the property of Mr. Kadi as the rightful and innocent owner of that $820,000.

6. At the December 2003 meeting, we also provided information to AUSA Ferguson in order to establish that any allegations against Mr. Kadi were both inappropriate and unfounded. AUSA Ferguson promised to review the information we supplied and get back to Mr Anderson.

7. Over the course of the following year, I frequently had communications with Mr. Anderson, who told me he had a number of communications with AUSA Ferguson with respect to this matter.

8. Mr. Anderson told me that, during his communications with AUSA Ferguson:

> (a) Mr Anderson reasserted Mr Kadi's rights to seek repayment of the loan;
>
> and
>
> (b) AUSA Ferguson repeatedly requested that Mr. Kadi be patient and forbear from taking any action while AUSA Ferguson was conducting related investigations in Chicago.

9. Mr. Anderson further informed me that AUSA Ferguson represented that he believed that the outcome of these investigations would be helpful to Mr. Kadi.

10. Furthermore, Mr. Anderson told me that, in or about March 2004, AUSA Ferguson stated that he expected that the Government would reach a settlement with QLI, which would result in the money seized from QLI being returned to QLI, with interest, which would enable Mr. Kadi to seek repayment of the loan directly from QLI.

11. Mr. Anderson also informed me that AUSA Ferguson stated that he believed that Mr. Kadi was entitled to having the $820,000 which he had loaned to QLI returned to him.

12. Based upon AUSA Ferguson's requests for patience and assurances that Mr. Kadi's claim would be handled fairly, Mr. Kadi did refrain from filing a claim in this action.

13. The information from AUSA Ferguson in 2004 was consistent with what I had been told in 2001 by William H. Theis, Esq., of the Federal Defender Program. At that time Mr. Theis was representing QLI in this action. In October 2001, I spoke with Mr Theis who informed me that QLI had been involved in negotiations with the Government to resolve this matter, which would result in the money seized from QLI being returned to QLI.

14. Mr. Theis further informed me that, due to the existence of these negotiations, he had in Summer 2001 asked Mr. Kadi to not file a claim in this action.

15. I am informed by former-FBI agent Thomas Locke, that in January 2008 he contacted AUSA Ferguson in an effort to determine whether

the time was appropriate for Mr. Kadi to file his claim, or otherwise obtain the return of his monies. AUSA Ferguson did not respond to Mr. Locke.

16. On June 26 and August 6, 2009, I wrote to AUSA Ferguson in an effort to determine the status of his investigations, and whether the time was appropriate for Mr. Kadi to file a claim or otherwise obtain the return of his monies. Other than acknowledging the receipt of my letters via email, AUSA Ferguson did not respond substantively to my letters.

17. In November of 2009, I asked Mr. Kadi's current U.S. legal counsel to contact QLI's current lawyer in an effort to determine the status of the forfeiture action and Mr. Kadi's monies. I am informed by Mr Kadi's US counsel that QLI's counsel noted that the forfeiture action remained pending, but there had been no activity in many years other than occasional status hearings.

18. Despite the current, explicit inquiries, neither AUSA Ferguson nor QLI's attorney advised Mr. Kadi directly or through counsel that they were in fact in negotiations to dispose of Mr. Kadi's monies through the forfeiture action without consideration of his interest in and ownership of the funds. Similarly, neither AUSA Ferguson nor any other representative of the U.S. Attorney's Office, nor any attorney representing QLI advised Mr. Kadi or any of his legal counsel prior to the filing on or about December 1, 2009, with the Court of an agreed application to dispose of Mr. Kadi' s funds without his knowledge or agreement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my information and belief.

Executed: December 30th, 2009

[/s/ Guy Martin]
Guy Martin, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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|---|---|
| UNITED STATES OF AMERICA, | ) |
| | ) |
| Plaintiff, | ) |
| | ) |
| v. | ) |
| | ) |
| ONE 1997 E35 FORD VAN, VIN IFBJS31L3VHB70844, et al. | ) |
| | ) |
| Defendants. | ) |

No. 98 C 3548

Judge Andersen
Magistrate Judge Bobrick

AFFIDAVIT OF STANTON D. ANDERSON, ESQ.

1. I make this Affidavit based upon my personal knowledge.

2. I was formerly a partner at the law firm of McDermott Will & Emery ("McDermott"). During my tenure at McDermott, I was U.S. counsel to Yassin A. Kadi, a claimant in this action, from approximately March 2002 until approximately December 2004.

3. During the course of my representation of Mr. Kadi, I became aware that Mr. Kadi had loaned $820,000 to the Quranic Literacy Institute ("QLI"), another claimant in this action, on July

19, 1991, for the purchase of land at Woodridge, Illinois, USA ("the Woodridge land"). The loan was legally documented and the terms were negotiated by lawyers acting on both sides. Subsequently, in 1994, the Woodridge land was sold and Mr. Kadi authorized QLI to hold the proceeds of sale as a religious charitable trust for the purpose of QLI acquiring new premises. The proceeds of sale remained undisturbed in a bank account until 1998 while QLI set about searching for new premises. In Spring 1998, QLI identified suitable new premises and while QLI was in the process of negotiations for the purchase of these new premises, but before the purchase could be concluded, the money was seized by the U.S. Government as part of this forfeiture action. Although the seizure completely frustrated the agreed purpose, no funds have been repaid by QLI to Mr. Kadi.

4. As part of my representation of Mr. Kadi, I attempted to seek repayment of this loan.

5. On December 16, 2003, Mr. Kadi's UK legal counsel, Mr. Guy Martin, a Solicitor of the Superior Court of England and Wales and partner in the London law firm Carter-Ruck, Carter-Ruck consultant Maitre Saad Djebbar and I met at the Washington D.C. offices of McDermott with then-Assistant United States Attorney ("AUSA") Joseph M. Ferguson and FBI Special Agents Robert Holley and David D. Bray with respect to this matter. Also in attendance at the meeting was former-FBI agent Thomas Locke, whose company consults for Mr. Kadi, and who is well known in federal law enforcement circles.

6. At that meeting, we made clear to AUSA Ferguson that certain of the funds seized from QLI, namely the $820,000 loaned to QLI by Mr. Kadi, were actually the property of Mr. Kadi as the rightful and innocent owner of that $820,000.

7. At the December 2003 meeting, we also provided information to AUSA Ferguson to establish that any allegations against Mr. Kadi were both inappropriate and unfounded. Mr. Ferguson promised to review the information we supplied and get back to me.

8. Over the course of the following year, I had numerous communications with AUSA Ferguson with respect to this matter.

9. During these communications, I reasserted Mr. Kadi' s rights to seek repayment of the loan; and AUSA Ferguson repeatedly requested that Mr. Kadi be patient and forbear from taking any action, including filing a claim in this matter, while he was conducting related investigations in Chicago.

10. In these communications, AUSA Ferguson represented that he believed that the outcome of these investigations would be helpful to Mr. Kadi.

11. Furthermore, no later than March 2004, Mr. Ferguson advised me that he expected that the U.S. Government would reach a settlement with QLI, which would result in the money seized from QLI being returned to QLI, with interest, which would enable Mr. Kadi to seek repayment of the loan directly from QLI.

12. AUSA Ferguson further stated that he believed that Mr. Kadi was entitled to having the $820,000 which he had loaned to QLI returned to him.

13. Based upon AUSA Ferguson's requests for patience and assurances that Mr. Kadi's claim would be handled fairly, Mr. Kadi did refrain from filing a claim in this action.

I solemnly affirm under the penalties of perjury that the contents of the foregoing affidavit are true.

[/s/ Stanton D. Anderson]
Stanton D. Anderson, Esq.

~~STATE OF~~ District of :
: ss
~~COUNTY OF~~ Columbia :

On this 22nd day of January, 2010, before me, the undersigned officer, personally appeared Stanton D. Anderson, Esq., known to me or satisfactorily proven to be the person whose name is subscribed to within the instrument and acknowledged that he executed the same for the purposes therein contained.

In witness hereof I hereunto set my hand and official seal.

[/s/ Alicia R. Harris]
Notary Public
My Commission expires _____

ALICIA R. HARRIS
Notary Public, District of Columbia
My Commission Expires May 31, 2011